Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Telecommunications Carriers Eligible for Universal Service Support Total Call Mobile, Inc. Petition for Forbearance	)	WC Docket No. 09-197

TOTAL CALL MOBILE, INC.
PETITION FOR FORBEARANCE

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Summary

Total Call Mobile, Inc. ("TCM") seeks forbearance from Section 214(e)(1)(A) of the Communication Act of 1934, as amended, (the "Act") which requires a common carrier designated as an eligible telecommunications carrier ("ETC") to offer services supported by the Federal Universal Service Fund ("USF") over its own facilities or a combination of its own facilities and the resale of another carrier's services. As a Mobile Virtual Network Operator ("MVNO"), TCM provides commercial mobile radio services ("CMRS") using Sprint's networks and facilities (*i.e.*, similar to Virgin Mobile). Following this forbearance petition, TCM will file petitions to be designated as an ETC for purposes of participation in the USF's Lifeline program in multiple states, including tribal lands. Based upon the current economic environment, which has increased the need for the Lifeline program, and the public interest in higher Lifeline program participation, TCM respectfully requests that the Commission rule promptly in this matter.

TCM's Petition for Forbearance satisfies the three-prong test set forth by the Federal Communications Commission (the "Commission") which, if satisfied, permits ETCs to waive the facilities-based requirement in Section 214(e)(1)(A). First, enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with a telecommunications carrier are just and reasonable and are not unjustly or unreasonably discriminatory. TCM already competes against many other prepaid and postpaid wireless carriers in the robustly competitive wireless market. This competition ensures that TCM will offer consumers high quality services at competitive rates that are just, reasonable, and non-discriminatory.

Second, enforcement of the requirement is not necessary for the protection of consumers. Grant of the forbearance petition would allow Lifeline eligible consumers to have more options for affordable wireless telecommunications services. As a result, this would also advance the Commission's USF goal of increasing participation in the Low Income support programs. Further, granting forbearance would not unduly burden the USF or otherwise reduce funding available to other ETCs because TCM is seeking forbearance for the sole purpose of becoming a Lifeline ETC.

Third, forbearance from applying the requirement is consistent with the public interest. Forbearance is in the public interest because TCM will be able to provide discounted telecommunications services to qualified low-income consumers who are the intended beneficiaries of the Lifeline program. Many low-income consumers have difficulty obtaining access to telecommunications services because they are unable to pay the high usage fees or enter into long-term contracts. TCM's prepaid service plans are ideal for such customers to obtain cost-effective and high quality wireless services. Granting forbearance will enable TCM to contribute to the availability of affordable telecommunications services to consumers who otherwise cannot afford telecommunications services.

In addition, as TCM's request for forbearance parallels those of TracFone Wireless, Inc., Virgin Mobile USA, L.P, i-wireless, LLC, Head Start Telecom, Inc., Consumer Cellular, Inc., Midwestern Telecommunications, Inc., Line Up, LLC, and Conexions Wireless, LLC, also resellers of CMRS services, the Commission should likewise grant forbearance under the same conditions for TCM. In the 2009 decision granting forbearance to Virgin Mobile, the Commission held that providing discounted telecommunications services to low-income consumers outweighed meeting the requirements that Virgin Mobile own its facilities. Granting forbearance to TCM would be consistent with the Commission's precedent and additionally would foster the USF's general mission in providing affordable telecommunications services to low-income consumers, including eligible residents of tribal lands.

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PETITION FOR FORBEARANCE

Total Call Mobile, Inc. ("TCM"), pursuant to Section 10(a) of the Communications Act of 1934, as amended (the "Act"),[1] submits this petition for forbearance from the requirements in Section 214(e)(1)(A) of the Act and section 54.201(d)(1)(A) of the Federal Communications Commission's ("FCC" or "Commission") rules, which require a common carrier designated as an eligible telecommunications carrier ("ETC") to offer services supported by the federal universal service fund ("USF") over its own facilities or a combination of its own facilities and the resale of another carrier's services.[2] TCM is a wholly owned subsidiary of Total Call International, Inc. ("TCI"), a national prepaid telecommunications services provider. TCM also offers services to customers nationally, including the U.S. territories of Puerto Rico and the Virgin Islands. TCM's services, which are based off the Sprint

[1] *See* 47 U.S.C. § 151 *et seq.*

[2] *See* 47 U.S.C. § 214(e)(1)(A) *See also*, 47 C.F.R. § 54.201(d)(1)(A).

network, are available in all locations where Sprint offers services (*i.e.*, similar to Virgin Mobile). TCM seeks forbearance only for purposes of participating in USF's Lifeline program. TCM satisfies the requirements set forth in Section 10(a) of the Act and this Petition is consistent with Commission precedent because it seeks forbearance from the facilities-based requirements under Section 214(e) solely to participate in the USF's Lifeline program.[3] If the Commission grants forbearance, TCM will be able to provide discounted services to even more low-income customers. In addition, TCM will be able to further expand its services to low-income consumers that lack access to affordable telecommunications services, including eligible individuals living on tribal lands. The Commission should promptly grant forbearance to TCM so that TCM may expand its service of the low-income consumers.

I. BACKGROUND

A. Total Call Mobile Overview

TCM is a mobile virtual network operator ("MVNO") that provides wireless mobile phone services to consumers across the United States. Sprint provides TCM with all the network infrastructure and wireless transmission facilities on which TCM operates and provides services to its customers. As a reseller of wireless services, TCM purchases wireless network services from Sprint on a wholesale basis and resells these services to its customers. TCM

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[3] *See, e.g., Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. §214(e)(1)(A) and 47 C.F.R. § 54.201(i),* 20 FCC Rcd 15095 (2005) ("*TracFone Forbearance Order*"); *Petition of Virgin Mobile USA. L.P. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, 20 FCC Rcd 3381 (2009) ("*Virgin Mobile Forbearance Order*"); *Petition for Forbearance of i-wireless, LLC,* 25 FCC Rcd 8784 (2010) (*"i-wireless Forbearance Order"*); *Telecommunications Carriers Eligible for Universal Service Support; Federal-State Joint Board on Universal Service; Head Start Petition for Forbearance; Consumer Cellular Petition for Forbearance; Midwestern Telecommunications Inc. Petition for Forbearance; Line Up, LLC Petition for Forbearance,* 25 FCC Rcd 10510 (2010)*; Conexions Petition for Forbearance*, WC Docket No. 09-197, CC Docket No. 96-45, Order, FCC 10-178 (rel. October 1, 2010) ("*Conexions Order*")*,* (collectively, the "*Forbearance Orders*").

provides affordable prepaid mobile phone service, including calling and text messaging, along with user-friendly handsets and high quality customer service. TCM's products and plans are specially geared toward serving lower income communities, and its service models and pricing plans reflect this mission. TCM does not require service contracts from its customers and it always ensures competitive low pricing for its services and products. By providing affordable service, TCM can reach out to those who are often ignored by traditional carriers, including individuals living on tribal lands.

TCM manages and markets all aspects of the customer experience, including setting service pricing, handset selection, marketing materials, and live customer service. TCM's prepaid, budget-friendly pricing has given many low-income consumers the option of having basic mobile phone service without the burden of hidden costs, varying monthly charges, or contractual commitments. Customers are able to customize their mobile phone service to suit their needs with TCM's pay-as-you-go rechargeable mobile phone plans.

Based upon internal surveys, a substantial portion of TCM's customers are low-income consumers who earn under $25,000 per year. TCM's customers depend on and benefit greatly from TCM's inexpensive and flexible pricing model. TCM does not impose credit checks nor does it require any contractual commitments. In addition, most of TCM's customers turn to TCM because they cannot afford the postpaid services provided by traditional carriers. Although the nature of prepaid service allows consumers to have control of their bills in advance, TCM's affordability also reaches out to the very low-income sector of the consumer base. As such, TCM contributes to the expansion of wireless services for low-income consumers, including individuals living on tribal lands. If forbearance is granted, TCM will proceed to petition for ETC designation in states and territories where it already has a strong customer base including, but not limited to, California.

B. Lifeline Program

Universal service has been a fundamental goal of federal telecommunications regulation, as recognized in the Act. Section 151 emphasizes the goal of having adequate communication facilities at reasonable rates, available "so far as possible, to all the people of the United States."[4] The Act explicitly directs the Commission to consider whether all consumers, including low-income consumers, have access to affordable telecommunications services.[5] As a result, the Commission developed the USF, a fund to which all telecommunications providers are required to contribute a percentage of their revenues. These contributions are allocated to four separate programs, one being the Lifeline program, which is specifically designed to reduce the monthly cost of telecommunications services for lower-income consumers by providing them with discounted telephone services, with even greater discounts for individuals living on tribal lands.[6]

Overall, the Lifeline program has been a success in furthering the goal of providing universal telecommunications services. However, the Commission has noted that "there is more that we can do to make telephone service affordable for more low-income households."[7] Further, the Commission has targeted the low Lifeline participation rate as one area for improvement.[8] These same concerns regarding the underutilization of the Lifeline

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[4] 47 U.S.C. § 151.

[5] 47 U.S.C. § 253(b)(3).

[6] 47 C.F.R. §§ 54.400 and 54.401.

[7] *See Lifeline and Link-Up,* 19 FCC Rcd 8302, 8305 (2004) ("*Lifeline Order*"). According to the Commission's own statistics, only one-third of households eligible for assistance actually participated in the Lifeline/Link-Up program just a few years ago. *See id.*

[8] *Id.* at 8436.

program have existed since its inception.[9] More recent studies by the Universal Service Administration Company ("USAC") in 2010 reveal that only six states had more than 50 percent of eligible low-income households subscribing to the Lifeline program, while the majority of states had a participation rate of less than 20 percent.[10] Further, the increase in participation rates by state from 2007 to 2010 was minimal, according to the data gathered by USAC.[11]

C. Forbearance Standard

In an effort to increase participation in the Lifeline program, the Commission has allowed pure reselling carriers like TCM to bypass the facilities-based requirement of Section 214(e)(1)(A) when petitioning to become a Lifeline ETC. Section 10(a) of the Act authorizes the Commission to forbear such a requirement provided that:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.[12]

As discussed in Section II(A) through (C) below, forbearance should be granted to TCM because this Petition meets the above three factors.

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[9] *See Federal-State Joint Board on Universal Service,* , 12 FCC Rcd 8776, 8792 (1996) ("1996 *Universal Service Report and Order*").

[10] Information available at: http://www.usac.org/li/about/participation-rate-information.aspx (last visited May 16, 2011).

[11] *Id.*

[12] 47 U.S.C. § 160(a).

II. ANALYSIS

A. TCM Should Be Granted Forbearance Because Enforcement of Section 214(e)(1)(A) Is Not Necessary to Ensure that TCM's Rates are Just, Reasonable, and Non-Discriminatory.

Section 10(a)(1) of the Act requires the Commission to determine whether enforcement of the facilities-based requirement of Section 214(e) for a wireless reseller is necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.[13] For the purposes of offering Lifeline services, enforcement of the facilities-based requirement is not necessary to ensure that TCM's rates are just and reasonable. MVNOs, as resellers, are by their very definition, subject to competition from the facilities carrier whose services they resell. Thus, TCM is subject to existing and potential competition, and as such, this competition ensures that TCM's rates are just and reasonable and not unjustly or unreasonably discriminatory.

The Commission concluded the same in the 2005 *TracFone Forbearance Order*,[14] the 2009 *Virgin Mobile Forbearance Order*,[15] the 2010 *i-wireless Forbearance Order*,[16] the 2010 *Head Start, Consumer Cellular, Midwestern, and Line Up Forbearance Orders*,[17] and the 2010 *Conexions Forbearance Order*.[18] The Commission should be consistent with precedent

[13] 47 U.S.C. § 160(a)(1).

[14] *TracFone Forbearance Order*, 20 FCC Rcd at 15101 ¶ 13.

[15] *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3389, ¶ 19.

[16] *i-wireless Forbearance Order*, 25 FCC Rcd at 8787, ¶ 9.

[17] *Head Start Petition for Forbearance; Consumer Cellular Petition for Forbearance; Midwestern Telecommunications Inc. Petition for Forbearance; Line Up, LLC Petition for Forbearance,* 25 FCC Rcd at 10514, ¶ 9.

[18] *Conexions Forbearance Order*, Order, FCC 10-178 at 13868, ¶ 9.

and find that the competition TCM faces in the wireless industry will ensure just and reasonable rates such that the facilities-based requirement is not necessary.

B. TCM Should Be Granted Forbearance Because Enforcement of Section 214(e)(1)(A) Is Not Necessary for the Protection of Consumers.

Section 10(a)(2) of the Act requires that the Commission determine whether enforcement of the facilities-based requirement of Section 214(e) is necessary for the protection of consumers.[19] The Commission has previously determined that this requirement is not necessary for the protection of consumers, and further, that forbearance actually benefits consumers because competing providers offer greater choices to consumers. More specifically, the Commission has found the prepaid telephone service feature to be an "attractive alternative for such consumers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts."[20]

Not only does TCM offer prepaid mobile services to protect consumers who desire to have more control over their wireless service budget, but it also includes the E911 feature on each handset to ensure that consumers can make emergency calls even if the handset is not activated with service or minutes. In addition, granting forbearance to TCM is beneficial to consumers because it would promote competition and increase pressure on other carriers to target the low-income consumer base.

Further, TCM's request will not harm consumers by unduly burdening the USF or otherwise reducing the amount of funding available to other ETCs. In the *TracFone and Virgin Mobile Forbearance Orders*, the Commission ruled that granting forbearance for Lifeline-only services would not "significantly burden the [USF] and thus negatively affect consumers through

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[19] 47 U.S.C. § 160(a)(2)

[20] *TracFone Forbearance Order*, 20 FCC Rcd at 15101, ¶ 15.

increased pass-through charges of the carriers' contribution obligations.[21] The Commission also concluded that "any increase in the size of the fund would be minimal and is outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers."[22] In fact, the Commission found that the "additional choice and service options of another wireless reseller offering a service for low-income consumers represents a significant benefit for consumers and is in the public interest."[23]

C. <u>TCM Should Be Granted Forbearance Because It Is in the Public Interest.</u>

Finally, Section 10(a)(3) requires the Commission to determine whether enforcement of the facilities-based requirement for a wireless reseller that seeks ETC designation for Lifeline support is in the public interest.[24] It is clear that forbearance from this requirement could only further the public interest by providing consumers, particularly low-income Lifeline consumers, with lower prices and high quality services. Presently, only about one-third of households eligible for low-income assistance actually subscribe to the program.[25] On numerous occasions, the Commission has expressed concern over the underutilization of the Lifeline program and even stated that it believed "even more can be done to further expand participation by those subscribers that qualify and thus further the statutory goal of section 254(b)."[26] In an effort to increase consumer and carrier participation in the program, the Commission expanded eligibility criteria and outreach guidelines for federal default states.[27]

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[21] *TracFone Forbearance Order*, 20 FCC Rcd at 15103, ¶ 17; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3391, ¶ 24.

[22] *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3392, ¶ 24.

[23] *Id.*

[24] 47 U.S.C. § 160(a)(3).

[25] *Lifeline Order*, 19 FCC Rcd at 8305, ¶ 1 and Appendix K at Table 1.B.

[26] *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3393, ¶ 30.

[27] *Id.*

Granting TCM forbearance from the Section 214(e)(1)(A) facilities-based requirement is in the public interest because it will enable TCM to expand the availability of affordable telecommunications services to low-income consumers, leading to increased utilization of the Lifeline program. Additionally, granting forbearance will promote a more competitive wireless market. Alternatively, if the Commission decides to decline TCM's forbearance request, it will hinder competition and impede innovative wireless service solutions for low-income consumers, ultimately disserving the public interest. If TCM is granted forbearance, it will abide by the same conditions imposed on TracFone and Virgin Mobile, ensuring that the public interest is served in the goal to provide universal communications services that come with emergency-access capabilities.

D. Because TCM Is a Pure Reseller and Not an ILEC, There Is No Concern of Double Recovery from the USF.

The Act states that only ETCs shall be eligible to receive funding from the USF, which includes the Lifeline program.[28] In the past, the Commission has declined to extend ETC status to pure resellers because these resellers purchased minutes and services from facilities-based providers at a price that already included the universal service support payment.[29] Thus, the Commission concluded that such denial of ETC status would be proper because it would prevent resellers from double recovery through USF funding.[30] While double recovery might be an issue in cases where the underlying carrier is an ILEC subject to regulated resale rates under Section 251(c)(4), that is not the case here where TCM will be reselling the services of Sprint which is not an ILEC subject to Section 251(c)(4). When a reseller purchases its services from a

[28] 47 U.S.C. § 214(e)(1)(A).

[29] *1996 Universal Service Report and Order*, ¶ 179.

[30] *Id.* at 8876.

carrier other than one subject to Section 251(c)(4), the reseller does not receive the discounted service rate and instead only receives payments from the Lifeline fund.

E. **<u>The Commission Should Follow Precedent And Grant TCM Forbearance from Section 214(e)(1)(A).</u>**

Over the past seven years, the Commission granted forbearance petitions submitted by TracFone Wireless, Inc. ("TracFone") in 2004, Virgin Mobile USA. L.P. ("Virgin Mobile") in 2009, i-wireless, LLC ("i-wireless") in 2010, Head Start Telecom Inc. ("Head Start"), Consumer Cellular, Inc. ("Consumer Cellular"), Midwestern Telecommunications, Inc. ("Midwestern"), Line Up, LLC ("Line Up"), and Conexions Wireless, LLC ("Conexions") in 2010.[31] Each wireless reseller sought forbearance from the facilities-based requirement in Section 214(e)(1)(A) of the Act.[32] Like many of these providers, TCM also is an MVNO that provides nationwide prepaid wireless services. In each of the *Forbearance Orders*, the Commission considered the statutory goal of universal service in the context of low-income consumers[33] and the statutory purpose behind the facilities requirement as it relates to carriers qualifying for federal low-income universal service support.[34] After careful examination of the regulatory goals of universal service as applied to low-income consumers, the Commission concluded that each company satisfied the three requirements necessary for a grant of forbearance. The Commission conditioned granting forbearance on the promise that carriers abide by the restrictions imposed on TracFone and Virgin Mobile.[35] TCM's petition does not materially differ from those previously granted by the Commission. Upon grant of this

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[31] *See Forbearance Orders.*

[32] *Id.*

[33] 47 U.S.C. § 254(b)(3).

[34] 47 U.S.C. § 214(e).

[35] *TracFone Forbearance Order,* 20 FCC Rcd at 15102, ¶ 16; *Virgin Mobile Forbearance Order,* 24 FCC Rcd at 3381 ¶ 12.

forbearance petition, TCM will submit a compliance plan to the Commission that details its compliance with these same conditions that have qualified the forbearance grants to TracFone and Virgin Mobile.

In summary, the conditions imposed by the Commission in the *Virgin Mobile Forbearance Order* required Virgin Mobile to:

> (a) provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes;
>
> (b) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service;
>
> (c) comply with conditions (a) and (b) as of the date it provides Lifeline service;
>
> (d) obtain a certification from each PSAP where Virgin Mobile provides Lifeline service confirming that Virgin Mobile provides its customers with 911 and E911 access or if, within 90 days of Virgin Mobile's request for certification, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that Virgin Mobile does not provide its customers with access to 911 and E911 service within the PSAPs service area, Virgin Mobile may self-certify that it meets the basic and E911 requirements;
>
> (e) require its customers to self-certify, at time of service activation and annually thereafter, that they are the head of household and receive Lifeline-supported service only from Virgin Mobile; and
>
> (f) establish safeguards to prevent its customers from receiving multiple Virgin Mobile Lifeline subsidies at the same address.[36]

III. <u>REQUEST FOR EXPEDITED TREATMENT</u>

TCM respectfully requests that the Commission expedite this petition for forbearance. The Commission has credited the Lifeline program with increasing subscription rates to telephone service among low-income consumers, but also acknowledged that the Lifeline-support program has been underutilized, and thus not enough low-income consumers

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[36] *Virgin Mobile Forbearance Order*, 24 FCC Rcd 3381 ¶ 12.

have benefited from this program. Although there has been an increase in the number of households with telephone service, the Commission noted that more improvements are needed to further expand the participation rate of low-income households in the Lifeline program.[37] The Commission highlighted that the participation rate in this program has been low since its inception.[38] In an effort to increase participation in the Lifeline program, the Commission has expanded the qualifying criteria several times and adopted broader outreach guidelines to raise awareness of the programs among low-income consumers so that more low-income households will benefit by obtaining telecommunications service at an affordable rate.[39]

If granted limited ETC designation, TCM will be able to substantially expand its wireless services for eligible low-income consumers. Notably, the Commission has granted forbearance to Virgin Mobile and i-wireless, both wireless prepaid service providers that purchase wireless services from Sprint, just as TCM does. As such, the Commission should be able to rule promptly in granting TCM forbearance.

Moreover, the recent economic crisis indicates that more and more eligible consumers will significantly benefit from the Lifeline program. With unemployment near its peak, many consumers will be unable to maintain their current mobile phone services. However, as mobile phones have now become somewhat of a necessity, these consumers may turn to more cost-effective wireless plans, such as those supported by TCM. We therefore urge the Commission to act promptly so that TCM may immediately reach out to these consumers who can benefit under the Lifeline program.

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[37] *Virgin Mobile Order*, 24 FCC Rcd at 3393, ¶ 30.

[38] *Id. See also 1996 Universal Service Report and Order*, 12 FCC Rcd at 8792.

[39] See *Lifeline Order*, 19 FCC Rcd at 8305, ¶ 1 and Appendix K at Table 1.B.

IV. CONCLUSION

Based upon the forgoing, TCM requests an expedited approval of its petition for forbearance from the facilities-based requirement set forth in Section 214(e)(1)(A) solely for the purposes of designation as an ETC for the Lifeline program.

WHEREFORE, for all of the foregoing reasons, TCM respectfully requests that the Commission forbear from applying section 214(e)(1)(A) to its request for designation as an ETC.

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